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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,469	07/31/2001	David G. Sasuga	Sasuga	3474

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/919,469

Applicant(s)

SASUGA, DAVID G.

Examiner

David J Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

## **Detailed Action**

### ***Specification***

1. The disclosure is objected to because of the following informalities: on page 10 line 14 “HB” should be - -HP- -.

Appropriate correction is required.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: HB in figure 1. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because on figure 4 the reference dimension “HB” should be - -HP- - so that the drawing matches its description in the specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-11, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 4,057,932 to Spencer.

Referring to claim 1 Spencer discloses a method of packaging seedlings for distribution to and use by consumers, the method comprising: providing a tray – 51 and 52 including a bottom surface and an upper edge surface and having a predetermined height dimension extending from the bottom surface to the upper edge surface – see figures 7-10. Spencer further discloses growing plants on a growing medium to a seedling stage and placing the medium in the tray – 51 and 52 – see column 9 lines 24-68 and column 10 lines 1-68. Spencer further discloses distributing the tray – 51 and 52 with the medium placed in the tray and the plants growing on the medium, for sale to a consumer while the plants are still in the seedling stage – see column 4 lines 40-55. Spencer further discloses the height dimension being such that a top surface of the growing medium is closely adjacent to the upper edge surface when the medium is placed in the tray – 51 and 52 – see column 9 lines 42-59.

Referring to claims 3 and 15, Spencer discloses wherein growing the plants to the seedling stage comprises growing the plants from seed for at least about four weeks – see column 10 lines 31-57.

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Referring to claim 4, Spencer discloses a method of packaging seedlings for distribution to and use by consumers, the method comprising: providing a container – 50 including a top portion and a bottom portion, the container – 50 having a closed position in which the top portion and the bottom portion meet at an interface – 53 and 54 – see figures 7-10. Spencer further discloses growing plants on a growing medium to a seedling stage and placing the medium in the bottom portion of the container – 50 – see column 9 lines 24-68 and column 10 lines 1-68. Spencer further discloses closing the container – 50 with the medium in the bottom portion into the closed position – see column 9 lines 24-68 and column 10 lines 1-68. Spencer further discloses distributing the closed container for sale to a consumer while the plants are still in the seedling stage – see column 4 lines 40-55, and Spencer further discloses the bottom portion having a height dimension such that a top surface of the growing medium is closely adjacent to the interface – 53 and 54 when the medium is placed in the bottom portion, and the top portion having a height dimension such that when the container – 50 is in the closed position and the medium is in the bottom portion with the plants in the seedling stage extending upwardly therefrom, the plants are freely received in and protected by the top portion – see column 9 lines 24-68 and column 10 lines 1-68.

Referring to claim 5, Spencer discloses wherein the top portion and the bottom portion are hingedly connected – 62 and 63 to each other along a side portion of the interface – 53 and 54 – see figures 7-10.

Referring to claims 6-7, Spencer discloses wherein the container – 50 includes a latch – 57-60 opposite the side portion of the interface – 53 and 54 to releasably secure the container –

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50 in the closed position, and closing the container – 50 includes engaging the latch – 57-60 – see figures 7-10 and column 8 lines 1-17.

Referring to claim 8, Spencer discloses providing the container – 50 with venting to allow the plants to have access to fresh air when the plants are in the container – 50 and the container – 50 is in the closed position – see figure 10 which shows the open end at reference numerals 53 and 54 which allows for venting.

Referring to claim 9, Spencer discloses wherein providing the container – 50 with venting comprises leaving at least one gap between the top portion and the bottom portion when the container- 50 is in the closed position – see figure 10 where four gaps are shown at the location of reference numerals 53 and 54.

Referring to claims 10-11, Spencer discloses wherein the container – 50 has an open position in which, when the medium is in the bottom portion with the plants in the seedling stage extending upwardly from the medium, the plants are easily accessible to a user to allow stem portions of the plants to be snipped – see figures 7-10 and column 10 lines 42-68 and column 11 lines 1-64, which shows that the seedling is accessible and the user can manipulated the seedling in any way.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spencer as applied to claims 1 and 4 above, and further in view of U.S. Patent No. 5,382,270 to Graham et al. Referring to both claims 2 and 12, Spencer does not disclose wherein the plants are culinary herbs. Graham et al. does disclose the plants are culinary herbs – see column 8 lines 7-22. Therefore it would have been obvious to one of ordinary skill in the art to take the method of packaging seedlings for distribution of Spencer and add the plants being culinary herbs, so as to make the method more profitable for the user in that the culinary herbs could be sold to consumers who like to cook and restaurants to make a profit.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spencer as applied to claim 4 above, and further in view of U.S. Patent No. 4,742,644 to Groth et al. Spencer does not disclose providing a plurality of the containers and providing the top portion and the bottom portion of each container with complementary portions to facilitate stacking of the containers and inhibit accidental tipping of a stack of the containers. Groth et al. does disclose providing a plurality of the containers – 12,14, and 16 and providing the top portion and the bottom portion of each containers – 12,14, and 16 with complementary portions to facilitate stacking of the containers and inhibit accidental tipping of a stack of the containers – see figures 1-4. Therefore it would have been obvious to one of ordinary skill in the art to take the method of packaging seedlings for distribution of Spencer and add the plurality of containers of Groth et al., so as to make the method more efficient and profitable in that more plants can be shipped since

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more containers are used thus making the shipping of the plants quicker and thus meaning more plants can be sold which makes the method more profitable.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spencer as applied to claim 4 above, and further in view of U.S. Patent No. 4,790,105 to Wareing et al. Spencer does not disclose wherein the medium is placed in the bottom portion after the plants have been grown to the seedling stage. Wareing et al. does disclose the medium – 15 is placed in the bottom portion – 2 after the plants have been grown to the seedling stage – 13 – see column 5 lines 27-37. Therefore it would have been obvious to one of ordinary skill in the art to take the method of packaging seedlings for distribution of Spencer and include that the step of growing the seedlings comes before placing the seedlings in the container of Wareing et al., so as to make the container cheaper and thus make the method cheaper in that the container can be made to house a seedling only and does not have to include any additional design features to water or further grow the seedling.

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to methods of packaging seedlings for distribution in general:

U.S. Pat. No. 3,938,281 to Ingerstedt et al. – shows tray for growing plants

U.S. Pat. No. 3,987,924 to Uitz – shows container with vents to house plants



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U.S. Pat. No. 4,006,558 to Neddo et al. – shows container with hinge and latch

U.S. Pat. No. 4,050,188 to van Wingerden – shows method to grow plants

U.S. Pat. No. 4,285,164 to Moore – shows method to grow and distribute plants

U.S. Pat. No. 4,299,054 to Ware – shows container with latch and medium

U.S. Pat. No. 5,740,914 to Herzog – shows stackable containers

EP Pat. No. 0487894 to Buora – shows stackable plant containers

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

*Charles T. Jordan*  
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